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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 849

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,
Petitioners,

v.

JERRY R. ENGLAND, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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The Fifth Circuit Court of Appeals ordered this case remanded for full development of the facts (Petitioners' Appendix, p. 23); there is no adjudication below of any substantive legal import, and the petition should be denied as premature.

The original Complaint (which Petitioners have not reproduced here) alleged violations of federal rights guaranteed by the Fourteenth Amendment (Petitioners' Appendix, p. 74), and certain federal statutes (Petitioners' Appendix, pp. 89, 90).

The District Court dismissed the Complaint on the ground that it presented no unsettled federal question, holding that "in the absence of diversity of citizenship, this court is without jurisdiction" (Petitioners' Appendix, p. 19):

Noting plaintiffs' averments of federal rights infringed, the Court of Appeals reversed and remanded, saying:

> Without hearing the evidence, we cannot say that these claims are untrue * * *. (Petitioners' Appendix, p. 23).

The Court of Appeals denied a rehearing; pointed out that not only was the constitutionality of the Louisiana Medical Practice Act drawn in issue, but, before reaching that question, the Complaint also challenged the legality of the Medical Board's action in administering that statute. That Court reviewed applicable decisions of this Court, and specifically found that the averments of the Complaint "certainly place the *application* of the Medical Practice Act *to chiropractors* squarely within the above prohibitions" (Petitioners' Appendix, pp. 61-62). Obviously this case may be finally resolved without in any way involving constitutionality of the State statute, as claimed by the Petition (pp. 2-3).

In its present posture the cause stands for remand so that all of the facts may be fully developed. No substantive question has been decided. No reason has been suggested to warrant a departure from this Court's settled policy of reviewing only decisions of legal import in accord with Rule 19. See Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, by Wolfson and Kurland (1951), sec. 130.

CONCLUSION

Since the Court of Appeals ordered the cause remanded simply for development of the facts, there is no decision on the law to review. The petition for certiorari is premature, and should not be granted.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of this Brief in Opposition have been served upon counsel for petitioners, Robert E. LeCorgne, Jr., and St. Clair. Adams, Jr., of Adams and Reese, 847 National Bank of Commerce Building, New Orleans 12, Louisiana, by placing in the United States Mail, postage prepaid, on May , 1959.

RUSSELL MORTON BROWN